

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**HEATHER STEWART,  
Grievant,**

**v.**

**Docket No. 2014-0620-LinED**

**LINCOLN COUNTY BOARD OF EDUCATION,  
Respondent.**

**DECISION**

Grievant, Heather Stewart, is employed by Respondent, Lincoln County Board of Education. On November 5, 2013, Grievant filed this grievance *pro se* against Respondent stating,

Grievant, a Clerk/Accountant, is employed in the Respondent's central office in the food services department and to the special education department. Grievant's immediate supervisors are Angie Prichard, executive secretary/coordinator & Jeremy Brunty, Director. Grievant asserts that she is performing the duties of a secretary rather than a clerk. Grievant alleges that she is misclassified and should be reclassified as a Secretary III and/or an Executive Secretary per the Respondent's job description of Executive Secretary. Grievant alleges a violation of Respondent's job description, W.Va. Code 18A-4-8 and 18-A-4-8a.

For relief, Grievant seeks "reclassification as a Secretary II and/or Executive Secretary, retroactive and prospective wages, benefits, and seniority in the secretary classification category. Grievant also seeks interest on all monetary sums."

Following the December 13, 2013 level one hearing, an undated level one decision was served on the parties on January 13, 2014, denying the grievance.

Grievant appealed to level two by counsel on January 24, 2014, and the Statement of Grievance was changed<sup>1</sup> to the following:

Grievant is employed in the food service and the special education departments of Respondent's central office. She is supervised by a coordinator of services in one department and a director in the other. Grievant contends that she is performing the duties of an Executive Secretary and/or Secretary III per Respondent's job description. She alleges a violation of W.Va. Code 18A-4-8 & 18A-4-8a and county policy/practice.

Grievant perfected the appeal to level three of the grievance process on April 26, 2014, and there was no change in the Statement of Grievance from the level two form. Respondent filed a motion to dismiss on July 25, 2014, alleging the grievance was untimely filed, to which Grievant filed a response on July 29, 2014. A telephone conference on Respondent's *Motion to Dismiss* was held on July 31, 2014. The parties were also afforded an opportunity to informally submit any additional argument. Respondent submitted additional argument by e-mail on August 4, 2014. By order entered August 11, 2014, the undersigned denied the motion to dismiss<sup>2</sup>. A level three hearing was held on August 15, 2014, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant was represented by counsel, John Everett Roush, West Virginia School Service Personnel Association. Respondent was represented by counsel, Rebecca M. Tinder, Bowles Rice LLP. This matter became

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<sup>1</sup> Respondent objects to the change in Grievant's Statement of Grievance between level one and level three and asserts the undersigned should not consider the level three Statement of Grievance.

<sup>2</sup> Respondent objects to the denial of its Motion to Dismiss and renewed its motion at the level three hearing and in its Proposed Findings of Fact and Conclusions of Law. Respondent's objection is noted. The motion will not be discussed further in the decision. The August 11, 2014, Order Denying Motion to Dismiss adequately addresses the motion and is incorporated by reference in this decision.

mature for decision on September 15, 2014, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

### **Synopsis**

Grievant is employed as a Clerk II/Accountant II, splitting her time between two departments. Grievant asserts she should be classified as a Secretary III or Executive Secretary. Grievant's duties fit both the statutory definition and Respondent's job description for Clerk II/Accountant II. Clerk and secretarial duties overlap, and the only secretarial duties Grievant performs are those that overlap with clerk duties. Grievant is not a secretary. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

### **Findings of Fact**

1. Grievant is employed as a Clerk II/Accountant II, a multiclassified position created by Respondent in 2013 to address similar duties needed on a half-time basis in both the Office of Food Services and the Office of Special Education. Grievant primarily works mornings in the Office of Food Services and afternoons in the Office of Special Education.
2. The Clerk II/Accountant II position held by Grievant is unique in the county.
3. In addition to the statutory definitions of job classifications, Respondent has also adopted specific job descriptions.<sup>3</sup>
4. The job description for Clerk II/Accountant II states in relevant part:

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<sup>3</sup> Only the job descriptions for Accountant II/Clerk II and Executive Secretary were presented as evidence.

A. Responsibilities:

1. To maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing, and related operations.
2. To perform general clerical task, prepare reports and tabulations and operate office machines.

B. Relationship to Others:

1. Works under the direct supervision of their immediate supervisor.
2. Works cooperatively with all employees and public to ensure a smoothly functions department.

. . .

E. Functions and Duties:

1. Perform the usual office routines and practices associated with a busy yet productive and smoothly run office.
2. Prepare accurate reports and record keeping tasks required of the Food Service Office.
3. Assist the Food Service Coordinator in inventory maintenance of all Commodity food items and delivery of items to schools.
4. Assist the Food Service Coordinator in compiling, tabulating, and forwarding all invoices to the finance department in a timely manner.
5. Maintain a current list or database of students with disabilities that are Medicaid eligible.
6. Provide individual student Medicaid numbers to individual providers in a timely manner.
7. Secure prior Physician Authorization for school based services that require such authorization. File signed authorization in each individual student file and submit a copy to the appropriate provider.
8. Establish and maintain a database or similar system reflecting the various Medicaid services that each student can be billed for reimbursement.
9. Develop and maintain a matrix or other accountability system to document that providers bill for all Medicaid services for each student in a timely manner.
10. Maintain a file or database reflecting Medicaid reimbursement and denials by month, by year.

5. The job description for Executive Secretary states in relevant part:

A. Responsibilities:

1. To serve as secretary to specific department / department head, assisting to assure that the office operates smoothly and efficiently.
  2. Maintain lines of communication with all schools and departments.
  3. Handle routine or emergency situations in the absence of the department head or other supervisors as required.
  4. To assist department head and/or supervisor in various responsibilities of the department as directed. May include scheduling appointments, correspondence, and reports.
- B. Relationship to Others:
1. Works under the direct supervision of the department head / director.
  2. Works in a cooperative manner with all school personnel and the public toward the attainment of the goals and objectives of the school system.
  3. Works cooperatively with other in department to maintain positive environment and to attain goals and objectives of the department.

. . .

E. Functions and Duties:

1. Preparation of correspondence and factual reports which require exercise of judgment and originality.
2. Participate in in-service training as directed by the department head and as deemed necessary by the Superintendent of schools.
3. Complete transcription and Dictaphone assignments as required.
4. Maintain open communication with central offices and schools.
5. Prepare requisitions and inventories of office supplies and materials.
6. Perform routine office duties as applicable to assignment, such as filing, placing & receiving phone calls, operation of FAX machines, mail handling, duplication of forms & materials, maintenance of personnel records, scheduling of conferences & interviews, etc.
7. Perform other duties assigned by department head or as deemed necessary by the Superintendent of Schools or his designee.

6. In the Office of Food Services, Grievant reports to Angela Prichard, who holds the dual classification of Executive Secretary/Food Service Coordinator. Ms. Prichard is not an administrator and reports to the Director of Food Services, Rhonda McCoy. Grievant tabulates invoices and forwards them to the Finance Department for payment, inputs orders, maintains spreadsheets, keeps inventory and allocates commodities, and maintains files. Grievant answers the telephone and deals with correspondence only as it relates to her duties, and not for Ms. Prichard.

7. In the Office of Special Education, Grievant reports to the Director of Special Education, Jeremy Brunty. Grievant is responsible for Medicaid billing. Grievant maintains related databases, receives and reviews forms, completes billing through WVEIS<sup>4</sup>, prepares reports, and files. Grievant answers the telephone and deals with correspondence only as it relates to her duties, and not for Mr. Brunty or the rest of the office.

8. Grievant does not serve as Director Brunty's secretary. Director Brunty has a secretary, Amy Adkins, who answers incoming calls, deals with correspondence, and does the scheduling for him.

### **Discussion**

As a preliminary matter, Respondent objects to the change in Grievant's Statement of Grievance between level one and level three, asserting the undersigned should not consider the level three Statement of Grievance. Respondent argues the change was not permitted because there was no agreement to amend, citing Sections 4.3 and 6.6 of the Rules of Practice and Procedure of the West Virginia Public

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<sup>4</sup> A computer program.

Employees Grievance Board. Section 4.3 refers to the section heading, Chief Administrator's Authority, and is applicable to level one. Section 6.6 requires that application for an order must be made by written motion unless made during a hearing. Neither section, nor any other portion of the Rules, specifically addresses whether a grievant is permitted to change the Statement of Grievance between levels. In this case, the only significant change between the two Statements is the addition that Respondent violated county policy/practice. Otherwise, the differences are merely in the wording used. Regardless of the addition to the level three Statement, the only "policy" or "practice" that Grievant argues in her case is that she should be reclassified per Respondent's job description, which contention also appeared in the level one Statement. Therefore, there is no significant difference between the two Statements.

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant asserts that a portion of her duties that Respondent has classified as Clerk II are actually secretarial duties. Grievant further asserts that because she is assigned to a central office administrator and a director she should be classified either

as a Secretary III or Executive Secretary. Respondent asserts that Grievant is properly classified, as the duties she performs are included in her current classification.

In order to prevail in a misclassification grievance, an employee must establish that his/her job duties and responsibilities more closely fit the sought classification rather than the existing classification. *Sammons/Varney v. Mingo County Bd. of Educ.*, Docket No. 96-29-356 (Dec. 30, 1996). A school service employee who establishes, by a preponderance of the evidence, that he/she is performing the duties of a higher W. VA. CODE § 18A-4-8 classification than that under which he/she is officially categorized, is entitled to reclassification. *Gregory v. Mingo County Bd. of Educ.*, Docket No. 95-29-006 (July 19, 1995); *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (Apr. 15, 1991); *Holliday v. Marshall County Bd. of Educ.*, Docket No. 89-25-376 (Nov. 30, 1989); *Scarberry v. Logan County Bd. of Educ.*, Docket No. 89-23-63 (Oct. 30, 1989). However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render the employee misclassified *per se*. *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001).

Respondent chose to adopt specific job descriptions for classifications, including the classifications at issue in this grievance. "County boards of education may expand upon the W. VA. CODE §18A-4-8 classification definitions in a manner which is consistent with those definitions. *Brewer v. Mercer Co. Bd. of Educ.*, Docket No. 91-27-002 (March 30, 1992).' *Pope and Stanley v. Mingo County Bd. of Educ.*, Docket No. 91-29-068 (July 31, 1992)." *Beahm and Himes v. Randolph County Bd. of Educ.*, Docket No. 98-42-241 (Jan. 7, 1999). "An administrative body must abide by the remedies and



procedures it properly establishes to conduct its affairs,” even if those procedures are more generous than employees might otherwise be entitled to. *Powell v. Brown*, 160 W. Va. 723, 238 S.E.2d 220 (1977).

Grievant’s position is multiclassified. Clerk II is defined as “a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines.” W. VA. CODE § 18A-4-8(i)(24). Accountant II is defined as “a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.” W. VA. CODE § 18A-4-8(i)(5). Respondent’s job classification expands on those definitions by listing very specific duties, but all duties fit within the statutory definitions of the two classifications.

Grievant asserts she should be classified as one of the two highest levels of secretary. Secretary III is defined as “a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of ‘secretary II’ or ‘secretary III.’” W. VA. CODE § 18A-4-8(i)(83). Executive Secretary is defined as “a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties.” W. VA. CODE § 18A-4-8(i)(45). The higher classifications of secretary must be read in conjunction with the lower to define the basic characteristics of the secretary series of classification. “‘Secretary I’ means a person employed to transcribe from notes or

mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.” W. VA. CODE § 18A-4-8(i)(81). “‘Secretary II’ means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. . .” W. VA. CODE § 18A-4-8(i)(82).

Grievant is not a secretary. There is significant overlap between clerk and secretary functions. Both perform clerical tasks, prepare reports, and operate office machines. So, while it is true that Grievant performs some tasks that secretaries perform, clerks perform the same tasks. The functions that distinguish secretaries by definition, receiving callers, transcription, and handling routine correspondence, Grievant does not do. She does not answer calls for her department or supervisors, but only takes calls relating to her specific tasks, other than acting as occasional back up for the secretaries in the two departments. She does not handle the correspondence for the department or her supervisors, again, dealing only with correspondence relating to her specific tasks. Since Grievant is not a secretary, she cannot be an Executive Secretary, whose most important responsibility is “[t]o serve as secretary to specific department/department head. . .” Grievant stresses that she works under the direct supervision of Director Brunty, so that means she is an Executive Secretary, but that ignores the requirement that she be his *secretary*, which she is not. Otherwise, any employee, regardless of their other tasks, could claim to be an Executive Secretary if

they were directly supervised by a Director. Other than the overlapping duties of clerk and secretary as discussed above, Grievant does not perform any of the duties of an Executive Secretary listed in the job description. For similar reasons, Grievant is not performing the duties of a Secretary III.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. In order to prevail in a misclassification grievance, an employee must establish that his/her job duties and responsibilities more closely fit the sought classification rather than the existing classification. *Sammons/Varney v. Mingo County Bd. of Educ.*, Docket No. 96-29-356 (Dec. 30, 1996). A school service employee who establishes, by a preponderance of the evidence, that he/she is performing the duties of a higher W. VA. CODE § 18A-4-8 classification than that under which he/she is officially categorized, is entitled to reclassification. *Gregory v. Mingo County Bd. of Educ.*, Docket No. 95-29-006 (July 19, 1995); *Hatfield v. Mingo County Bd. of Educ.*, Docket

No. 91-29-077 (Apr. 15, 1991); *Holliday v. Marshall County Bd. of Educ.*, Docket No. 89-25-376 (Nov. 30, 1989); *Scarberry v. Logan County Bd. of Educ.*, Docket No. 89-23-63 (Oct. 30, 1989). However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render the employee misclassified *per se*. *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001).

3. Respondent chose to adopt specific job descriptions for classifications, including the classifications at issue in this grievance. "County boards of education may expand upon the W. VA. CODE §18A-4-8 classification definitions in a manner which is consistent with those definitions. *Brewer v. Mercer Co. Bd. of Educ.*, Docket No. 91-27-002 (March 30, 1992).' *Pope and Stanley v. Mingo County Bd. of Educ.*, Docket No. 91-29-068 (July 31, 1992)." *Beahm and Himes v. Randolph County Bd. of Educ.*, Docket No. 98-42-241 (Jan. 7, 1999). "An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs," even if those procedures are more generous than employees might otherwise be entitled to. *Powell v. Brown*, 160 W. Va. 723, 238 S.E.2d 220 (1977).

4. Grievant did not prove that she is performing the duties of a Secretary III or Executive Secretary.

Accordingly, the grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any

of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2008).

**DATE: October 30, 2014**

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**Billie Thacker Catlett**  
**Administrative Law Judge**